IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO.862 OF 2003

Ratilal Hirji .. .. Appellant

Versus

D.M.Shukhtankar
Municipal Administrator
Municipal Corproation for Gr.Bombay.. Respondent

Shri Ashish Naik for appellant

CORAM : P.V.KAKADE,J.

DATE : 30TH NOVEMBER, 2004

P.C.:

1. Heard the learned counsel for the appellant.

2. Rule. Rule made returnable forthwith.

3. This is an appeal filed by the Appellant-plaintiff against the judgment and decree passed by the Lower Court dated 5.4.2002 dismissing the plaintiff's suit against the Defendant - Corporation.

4. The plaintiff received notice from the Defendant-Corporationn under Section 351 of the B.M.C.

Act as well as subsequent notice under Section 488 of the B.M.C. Act on the ground that unauthorised suit structures made by the plaintiff was directed to be removed. After the notices reply was given by the plaintiff and when the notices were not withdrawn the suit came to be filed for declaration and injunction against the respondent-corporation.

5. The learned trial judge adjudicated the dispute on merits. The defendant did not file its written statement but cross examined the plaintiff's witness exhaustively. It was held that the notices issued by the respondent-Corporation were legal and valid and plaintiff was unable to establish that the suit structure was authorised and therefore, was not liable to be demolished. It was also held that the suit structure was in existence prior to 1984 was not established and in view of this position the suit came to be dismissed. Hence the present appeal.

6. At the outset it may be noted that even though the respondent-Corporation has not filed its written statement, the cross examination held on behalf of the plaintiff was sufficient to settle the issues,

especially in view of the position that no documentary evidence in support of plaintiff's case came on record. In fact in his cross examination the plaintiff no.2, son of plaintiff no.1, candidly admitted that he had not brought the documentary evidence of the assessment bills. Further he volunteered that the suit structure was assessed and its tax was included in the bill issued in respect of entire building. However, he was not in a position to state that as to since when the suit structure was assessed by the Municipal taxes. He has stated that at the time of filing of the reply to the notice he has produced all the documents, however, he has not explained why those documents were not produced on record. This is the state of affairs regarding the plaintiffs evidence. In other words, there is no iota of evidence to show that the suit structure was in existence in the year 1984 as alleged or there is any evidence on record to show that any permission was sought for and was issued for the said structure.

7. In the result, the reasoning adopted and findings recorded by the learned trial judge appears to be just, legal and proper. Consequently appeal has no merits and stands dismissed in limine. The Civil application also

stands dismissed with no order as to costs.